

STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
13 DHC 20

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT E. GRIFFIN, Attorney,

Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND CONSENT ORDER OF  
DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, and members Donald C. Prentiss and Michael S. Edwards, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Jennifer A. Porter. Defendant, Robert E. Griffin ("Griffin"), was represented by Robert J. Lane, III. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Griffin consents to entry of this order of discipline and freely and voluntarily waives any and all right to appeal the entry of this order.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

#### **Findings of Fact**

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Robert E. Griffin ("Griffin"), was admitted to the North Carolina State Bar in 1977 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Griffin was engaged in the practice of law in the State of North Carolina and maintained a law office in Fuquay-Varina, Wake County, North Carolina.

5. During all of the relevant periods referred to herein, Griffin maintained an attorney trust account, account number ending in 0243, and an operating account, account number ending in 9349, at Fidelity Bank.

6. In May 2009, Israel Ojimadu consulted with Griffin regarding a worker's compensation case that Ojimadu was defending before the Industrial Commission.

7. Ojimadu paid Griffin \$300.00 for the consultation and for Griffin to obtain a continuance of the upcoming hearing before the Industrial Commission set for June 15, 2009.

8. Griffin had W.P., his non-attorney assistant, contact the assistant for the Deputy Commissioner assigned to the case to ascertain the procedure for requesting a continuance. Griffin drafted a motion to continue the case that was submitted to the Deputy Commissioner during this dialogue, but Griffin did not sign the motion, did not file the motion, and did not serve the motion on opposing counsel.

9. In the course of W.P.'s dialogue with the assistant for the Deputy Commissioner, the assistant informed W.P. that they needed to submit a proposed order with the motion. The Deputy Commissioner's assistant faxed to Griffin's office a sample proposed order on June 11, 2009.

10. The sample order said that the motion for continuance was granted and the hearing was continued.

11. Griffin and W.P. claim to have mistaken the sample order as the actual order from the Deputy Commissioner.

12. W.P. told Ojimadu by telephone that the hearing was continued and that he did not need to go to the Industrial Commission hearing on June 15, 2009.

13. Although Griffin had failed to actually file a motion to continue, the Deputy Commissioner issued an order on June 12, 2009 denying the motion to continue.

14. The order denying the motion to continue was served by the Industrial Commission upon counsel for the plaintiff in the case. The order was opposing counsel's first notice that Griffin was seeking a continuance on behalf of Ojimadu.

15. Ojimadu's case was heard on June 15, 2009.

16. Neither Ojimadu nor Griffin was present for the Industrial Commission hearing on June 15, 2009.

17. At the request of the Deputy Commissioner, opposing counsel called Griffin's office before the hearing began on June 15, 2009 regarding the absence of Ojimadu and Griffin. Opposing counsel spoke with W.P.

18. Opposing counsel told W.P. that the hearing was about to begin. W.P. said Griffin was in disposition court. W.P. said she would get in touch with Griffin.

19. W.P. contacted Griffin and told him that the hearing in Ojimadu's case was going forward that day. Griffin told W.P. that he would take care of it.

20. Griffin did not contact Ojimadu on June 15, 2009 to notify him that the Industrial Commission hearing was being held.

21. Griffin did not instruct W.P. to notify Ojimadu on June 15, 2009 that the Industrial Commission hearing was being held.

22. Griffin did not appear at the hearing or otherwise contact the Deputy Commissioner or her assistant on June 15, 2009 to notify the Deputy Commissioner that he thought the hearing was continued.

23. Griffin did not instruct W.P. to contact the Deputy Commissioner or her assistant on June 15, 2009 to notify the Deputy Commissioner that they thought the hearing was continued.

24. Griffin did not take any mitigating or corrective action after notice that the hearing was proceeding to achieve the object of his representation of Ojimadu, to wit: a continuance of the June 15, 2009 hearing.

25. Griffin did not take any mitigating or corrective action after notice that the hearing was proceeding to achieve a result comparable to the object of his representation of Ojimadu, such as requesting the setting of a hearing on a later date on which Ojimadu would be given the opportunity to present evidence in defense of him and his company.

26. Griffin did not notify Ojimadu on June 15, 2009 or after that Ojimadu's case was heard on June 15<sup>th</sup>.

27. Ojimadu discovered that the hearing had been held when he received an order from the Deputy Commissioner stating that the case was heard on June 15, 2009 and providing 30 days for the parties to submit contentions and a proposed opinion.

28. On or about July 13, 2009, Ojimadu talked with Griffin regarding the Industrial Commission case.

29. Ojimadu retained Griffin to negotiate with opposing counsel and the Attorney General's office regarding the amounts awarded against Ojimadu and his company at the June 15, 2009 hearing.

30. Griffin required a deposit of \$1,500.00 from Ojimadu, which was to be deposited into Griffin's trust account and billed against at the hourly rate of \$150.00.

31. Ojimadu gave Griffin a check for \$1,500.00 as an advance for Griffin's legal fees, to be billed against as described above and as set out in the Hourly Fee Agreement signed by Ojimadu and Griffin on July 13, 2009.

32. Griffin failed to deposit Ojimadu's \$1,500.00 into his trust account at the time he received the check from Ojimadu.

33. Griffin subsequently gave the check to W.P., who deposited Ojimadu's \$1,500.00 into Griffin's operating account.

34. Griffin became aware that Ojimadu's entrusted funds had not been deposited into his trust account when subsequent counsel for Ojimadu requested deposit documentation in about July 2010.

35. Griffin had expended Ojimadu's \$1,500.00 for Griffin's own use and benefit by the time he became aware that these entrusted funds were in his operating account rather than his trust account.

36. Griffin had not earned \$1,500.00 in fees in the representation of Ojimadu entered into on July 13, 2009 at the time he expended Ojimadu's entrusted funds for Griffin's own use and benefit, or at any time thereafter.

37. Ojimadu had terminated Griffin's representation in August 2009. At the time of the termination of the representation, Griffin had earned no more than \$202.50 in fees.

38. Griffin failed to deposit his own funds into his trust account to replace the balance of Ojimadu's entrusted funds and failed to take any other measure to replenish Ojimadu's entrusted funds.

39. Griffin did not return the unearned fees to Ojimadu until after a deputy counsel and an investigator from the State Bar met with Griffin in February 2012.

40. In addition to Griffin failing to notify Ojimadu that the hearing on June 15, 2009 was proceeding, and then that it had occurred, Griffin failed on several occasions throughout June and July 2009 to return calls from Ojimadu.

41. At the time Griffin was retained by Ojimadu for negotiation services in July 2009, Ojimadu's Industrial Commission case was still pending. The Deputy Commissioner had not yet filed the final order in the case.

42. While the Industrial Commission case was still pending, Griffin engaged in *ex parte* communications with the Deputy Commissioner about substantive issues in the case, including the issue of whether Ojimadu and his company had the requisite insurance.

43. Griffin did not notify opposing counsel that he would be engaging in this *ex parte* communication with the Deputy Commissioner.

44. Griffin sent the Deputy Commissioner an *ex parte* e-mail by way of her assistant, dated July 27, 2009, stating that he had been retained to assist Ojimadu and his company in a settlement of the case and asking her to hold off on the final order until the parties reached an agreement on settlement.

45. Griffin did not copy opposing counsel on this e-mail or otherwise simultaneously provide him a copy of this communication.

46. In November 2008, Otis Mims brought his mother, Julia Mims, to Griffin's office.

47. Otis Mims asked Griffin to prepare a deed by which Julia Mims would give certain property to Otis Mims.

48. Griffin, with the assistance of W.P., prepared a deed transferring the property at issue from Julia Mims to Otis Mims and oversaw Julia Mims' execution of the deed.

49. The property at issue consisted of several acres of land.

50. It was Griffin's understanding that Julia Mims was giving the subject property to Otis Mims as a gift and that Otis Mims was not paying Julia Mims for the property.

51. Although Julia Mims signed the deed in November 2008, Griffin did not record the deed until March 2010.

52. At the time Griffin recorded the deed in 2010, he caused excise taxes in the amount of \$20.00 to be assessed and reflected on the deed.

53. Pursuant to N.C. Gen. Stat. § 105-228.30, an excise tax is levied on each instrument by which any interest in real property is conveyed to another person at the rate of \$1.00 per \$500.00 (or fraction thereof) of the consideration or value of the interest conveyed.

54. This tax is not assessed upon transfers of an interest in real property by gift or if no consideration is due or paid by the transferee to the transferor, pursuant to N.C. Gen. Stat. § 105-228.29.

55. N.C. Gen. Stat. § 105-228.32 requires that the person who presents an instrument transferring an interest in property for registration must report to the Register of Deeds the amount of tax due. N.C. Gen. Stat. § 105-228.32 imposes a duty upon such person to report the correct amount of tax due.

56. \$20.00 in excise taxes on the deed from Julia Mims to Otis Mims indicates that Otis Mims had paid Julia Mims approximately \$10,000.00 for the property.

57. No discussion of Otis Mims paying Julia Mims any money in exchange for the land occurred in Griffin's presence while Julia Mims was at his office for the preparation and execution of the deed.

58. Griffin did not receive or disburse funds for the transfer of the property from Julia Mims to Otis Mims.

59. Griffin did not have nor had he received any documentation or objective evidence establishing that \$10,000.00 was paid to Julia Mims for the property when he recorded the deed.

60. Griffin had the \$20.00 of excise tax affixed on the deed as a result of the instructions of Otis Mims. Griffin had no information or knowledge of whether Julia Mims received consideration for the property conveyed to Otis Mims when he recorded the deed.

61. During the course of his law practice from at least 2007 through 2012, Griffin failed to promptly remove earned fees from his trust account, including but not limited to in the following clients' matters: Joseph Barnes; Charles Tharrington; Jagdeep Dutta; Patricia Barnhouse; Mary Barnhouse; and Mary Barnhouse Trust.

62. Instead of disbursing his full fee to himself, Griffin made disbursements to himself in smaller amounts over time, attributed as fees from these clients' cases.

63. In the course of incrementally disbursing fees to himself from the Dutta case, Griffin collected a total amount of fees that exceeded the fee to which he was entitled.

64. In his law practice from at least 2007 through 2012, Griffin deposited mixed funds into his operating account instead of his trust account, including but not limited to funds in domestic or civil cases that included money for future filing fees and funds in traffic cases that included money for future court costs and fines.

65. During the course of his law practice from at least 2007 through 2012, Griffin failed to promptly deposit entrusted funds into his attorney trust account,.

66. During the course of his law practice from at least 2007 through 2012, Griffin failed to engage in actions required by the Rules of Professional Conduct to properly maintain entrusted funds, including but not limited to the following;

- a. Griffin did not maintain a general office ledger for his trust account;
- b. Griffin did not compare the balance of a general office ledger for his trust account with the bank statement balance each month; and

- c. Griffin did not total individual client balances and compare that total with the balance of a general office ledger for his trust account and with the bank statement balance each quarter.

67. During the course of his practice from at least 2007 through 2012, Griffin delegated various trust account duties to W.P., including but not limited to the following: creating and maintaining client ledgers; preparing trust account checks for disbursements; preparing trust account checks to disburse attorney fees; depositing checks into the appropriate account (operating or trust account); and reconciliations of the trust account.

68. Griffin failed to adequately supervise W.P. in the performance of these delegated duties. Griffin's failure to supervise W.P. in the performance of these duties is reflected in various resulting deficiencies, including but not limited to the following:

- a. No general office ledger was maintained;
- b. The monthly and quarterly reconciliations were not performed in the manner and with the frequency required by the Rules of Professional Conduct;
- c. W.P. deposited \$1,500.00 in entrusted funds from Ojimadu into the operating account instead of the trust account;
- d. Griffin failed to realize Ojimadu's \$1,500.00 was not deposited into the trust account until counsel for Ojimadu requested deposit documentation approximately a year later; and
- e. An amount in excess of Griffin's fee was disbursed to Griffin for fees in the Dutta case.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

#### **Conclusions of Law**

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- a. By failing to communicate to Ojimadu that the hearing was occurring on June 15, 2009, by failing to communicate to Ojimadu that the hearing had been held on June 15, 2009, and by failing to respond to multiple attempts by Ojimadu to communicate with him, Griffin failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4) ;

- b. By failing to notify the Deputy Commissioner, either directly or through staff or through opposing counsel, that Ojimadu was not present at the hearing because Griffin thought the hearing had been continued and his office had so notified Ojimadu, and thus permitting the Deputy Commissioner to proceed with a hearing with incomplete procedural and substantive information and under circumstances likely to generate subsequent litigation, Griffin engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- c. By failing, after notice that the hearing was proceeding and then after notice that it had been held, to take any action to achieve the goal for which he had been retained, to wit: obtaining a continuance for a future date at which Ojimadu could present his defense, Griffin failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- d. By failing to refund the unearned portion of the \$1,500.00 of advance fees provided to him by Ojimadu upon termination of the representation, Griffin collected a clearly excessive fee in violation of Rule 1.5(a) and failed to take steps to protect his client's interests upon termination of the representation in violation of Rule 1.16(d);
- e. By failing to deposit Ojimadu's \$1,500.00 advance fee deposit into his trust account, Griffin failed to hold and maintain entrusted funds separate from his property in violation of Rule 1.15-2(a) and failed to deposit trust funds into his trust account in violation of Rule 1.15-2(b);
- f. By failing to reimburse to and maintain in his trust account the unearned balance of Ojimadu's \$1,500.00 after he realized the \$1,500.00 had been deposited into his operating account, Griffin failed to hold and maintain entrusted funds separate from his property in violation of Rule 1.15-2(a) and failed to deposit trust funds into his trust account in violation of Rule 1.15-2(b);
- g. By expending, and allowing the expenditure of, Ojimadu's \$1,500.00 from Griffin's operating account for Griffin's own purposes and benefit during a period of time when Griffin was not entitled to the entire \$1,500.00, Griffin used entrusted property for the benefit of himself and persons other than the legal or beneficial owner of that property in violation of Rule 1.15-2(j);
- h. By causing the public record to indicate that Otis Mims had paid Julia Mims approximately \$10,000.00 for the property transferred by the deed Griffin recorded when Griffin had no knowledge, information, or documents showing that Julia Mims received that amount in exchange for the property, Griffin failed to fulfill his statutory duty to accurately report



the excise tax owed and thus ensure the accuracy of the public record and thereby engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

- i. By failing to promptly disburse all earned fees to himself, Griffin failed to segregate and maintain property belonging to Griffin separate from entrusted funds in violation of Rule 1.15-2(a) and (f) and failed to promptly pay entrusted funds in violation of Rule 1.15-2(m);
- j. By disbursing to himself as attorney's fees more than the amount to which he was entitled to collect as an attorney's fee in the Dutta case, Griffin collected a clearly excessive fee in violation of Rule 1.5(a) and failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and (m);
- k. By failing to deposit into the trust account amounts received that included entrusted funds such as funds for future court filing fees or court costs and fines, Griffin failed to deposit mixed funds intact into the trust account in violation of Rule 1.15-2(g);
- l. By failing to promptly deposit entrusted funds into his trust account, such as entrusted funds received from Ojimadu, Griffin failed to properly deposit and maintain entrusted funds in violation of Rule 1.15-2(a) and (b);
- m. By failing to supervise W.P. in the deposit and disbursement of entrusted funds, such that Ojimadu's entrusted funds were deposited into the operating account and Dutta's funds were improperly disbursed, Griffin failed to make reasonable efforts to ensure his non-attorney assistant's conduct was compatible with his professional obligations in violation of Rule 5.3(b); and
- n. By delegating to W.P. the responsibility to maintain required trust accounting records, including delegating to W.P. the responsibility to perform monthly and quarterly reconciliations of his trust account, and by failing to adequately supervise W.P. therein, Defendant failed to conduct the requisite monthly and quarterly reconciliations of his trust account in violation of Rule 1.15-3(d) and failed to make reasonable efforts to ensure his non-attorney assistant's conduct was compatible with his professional obligations in violation of Rule 5.3(b).

Upon the consent of the parties, the Hearing Panel also enters the following:

#### **Findings of Fact Regarding Discipline**

1. Defendant received an admonition in 1981 for failure to attend or advise client to attend a hearing and failing to file a reply to a counterclaim.

2. Defendant received a 6 month suspension in 1989 for arranging for the execution and notarization of a client's signature at a time when the client was deceased and settling a matter without the consent of the estate of the deceased client.

3. Defendant received a reprimand in 2005 for failing to comply with the result of binding fee arbitration and for trying to suggest he had not agreed to binding arbitration when he had signed an agreement to participate in binding arbitration.

4. Although the evidence in this case does not establish intentional misappropriation, the failure to promptly disburse attorney fees in full and the failure to conduct proper reconciliations created conditions under which the inadvertent overdisbursement of fees from Dutta's funds and the conversion of Ojimadu's funds were foreseeable.

5. Allowing client funds to be improperly maintained or disbursed, even if inadvertent, places entrusted funds at risk and erodes the confidence clients place in attorneys who handle their affairs. As a result, such conduct harms the profession as a whole.

6. Clients trust the attorneys they retain to act in their best interests. Griffin betrayed this trust when he failed to take or direct any action to try to preserve Ojimadu's opportunity to present his defense, including but not limited to alerting the Industrial Commission of their understanding that their hearing had been continued or alerting Ojimadu that the hearing was proceeding.

7. Ojimadu lost his opportunity to present his defense in his case before the Industrial Commission. This loss was the foreseeable result of Griffin's failure to act or direct action to protect Ojimadu's interests upon learning that the hearing was proceeding.

8. Griffin cooperated with the State Bar's investigation.

9. Griffin agreed to cease handling entrusted funds and consented to the injunction filed in Wake County Superior Court on November 7, 2012 which enjoined him from handling entrusted funds.

10. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

#### **Conclusions With Respect To Discipline**

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North

Carolina State Bar and concludes the following factors warrant suspension of Defendant's license:

- a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Defendant's actions potentially had a negative impact on his clients' and the public's perception of the legal profession;
- c. Negative impact of Defendant's actions on the administration of justice;
- d. Impairment of client's ability to achieve the goals of the representation;

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- a. Prior disciplinary offenses;
- b. Remoteness of prior offenses;
- c. Absence of a dishonest or selfish motive;
- d. Indifference to making restitution;
- e. Multiple offenses;
- f. A pattern of misconduct;
- g. Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- h. Remorse;
- i. Vulnerability of the victims; and
- j. Experience in the practice of law.

4. Defendant's conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.

5. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the potential harm to the clients. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the offenses committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that a suspension followed by a period of stayed suspension is necessary to ensure Defendant complies with necessary conditions to avoid significant harm or the potential for significant harm to clients. For the protection of his clients and the public, it is necessary to monitor his trust account management and his law practice for a period of time in the form of a stayed suspension to ensure compliance with the Rules of Professional Conduct.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of a suspension of Defendant's law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

#### **Order of Discipline**

1. Defendant, Robert E. Griffin, is hereby suspended from the practice of law for three years.

2. Defendant is taxed with the costs and administrative fees of this action as assessed by the Secretary. The State Bar will send Defendant a statement of costs and fees to his address of record with the State Bar. Defendant shall pay the amount assessed within thirty days of the date on the statement of costs and fees.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules. Defendant shall file an affidavit certifying he has complied with the wind down rule with the Secretary of the North Carolina State Bar within 60 days of the effective date of this order.

4. After serving six (6) months of the active suspension of his license, Defendant may apply for a stay of the remaining period of suspension upon filing a petition demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125 of the North Carolina State Bar Discipline & Disability Rules, Defendant has complied with the following conditions:

- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;

- b. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
  - c. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
  - d. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
  - e. Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
  - f. Defendant provided, with his petition, an accurate three-way reconciliation as described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him at the time his suspension was activated. Defendant shall use the form prepared by the State Bar's Trust Account Compliance Counsel, which will be provided to him by the Office of Counsel, for this purpose. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s), ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and deposit slips corresponding to the reconciliation. The reconciliation will cover the 3 months immediately preceding the activation of the suspension and will accurately reflect the current status of funds and client funds in his trust account(s);
  - g. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
  - h. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
  - i. Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.
5. If any part of the three-year suspension is stayed, the stay will remain in effect only while Defendant complies with the following conditions:
- a. Each month Defendant shall provide the Office of Counsel of the State Bar with the three-way reconciliation described in the State Bar Lawyer's

Trust Account Handbook for all trust accounts maintained by him. Defendant shall use the form prepared by the State Bar's Trust Account Compliance Counsel, which will be provided to him by the Office of Counsel, for this purpose. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s) during that month, ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and deposit slips for each month. These documents are due on the 15<sup>th</sup> day of the following month – for example, the three-way reconciliation for the month of January is due on February 15;

- b. Each quarter, Defendant shall have a CPA audit his trust accounts and operating accounts. Defendant will be responsible for any associated costs. This audit shall assess whether Defendant has in his trust account the client funds he should be maintaining for his clients at that time, as well as Defendant's compliance with Rule 1.15-2 and Rule 1.15-3. The CPA's audit shall include addressing the items on the Accountant Checklist for Probation Cases which will be provided by the State Bar to Defendant. The quarterly audit reports from the CPA are due no later than 30 days after the end of the quarter – for example, the CPA audit for the first quarter of the calendar year (January, February, and March) is due on April 30;
- c. If either the monthly three-way reconciliation report or the CPA audit reveals any deviation from Defendant's obligations under Rule 1.15-2 or Rule 1.15-3, Defendant shall take remedial action within 10 days of the date of the three-way reconciliation report or the CPA audit and shall provide documentation showing the remedial action to the State Bar within 2 days of the date of the remedial action;
- d. Defendant shall comply with any requests from the Office of Counsel to provide any information regarding his trust accounts or to sign and provide any release or authorization to allow the Office of Counsel to obtain information directly from any bank in which Defendant maintains a trust account, by the deadline stated in the request;
- e. Within the first year of the stayed period of suspension, Defendant shall complete four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar. At least one such session shall be taken before the end of the next calendar quarter (i.e., by March 30, June 30, etc.) following the entry of this order and at least one such session shall be the Trust Accounting Rules Continuing Legal Education Program taught by Peter Bolac, Trust Account Compliance Counsel for The North Carolina State Bar. Defendant shall provide written proof of successful completion of the CLE courses to the State Bar within ten days of completing the courses. These

four hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. ID § .1518;

- f. Defendant shall provide the Office of Counsel with a quarterly report that includes the following information for each client matter that was pending during the quarter: client name and contact information; the type of client matter; the status of the client matter; all actions taken for the client during the quarter. This report is due no later than 30 days after the end of the quarter – for example, the client report for the first quarter of the calendar year (January, February, and March) is due on April 30;
- g. Defendant shall keep the North Carolina State Bar Membership Department advised of his current physical business address (not a Post Office box), telephone number, and e-mail address and shall notify the Bar of any change in address within ten (10) days of such change;
- h. Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar;
- i. Defendant shall respond to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation;
- j. Defendant will timely comply with the State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline;
- k. Defendant will pay all membership, Client Security Fund, and any other related dues, fees, and/or costs by the applicable deadline;
- l. Defendant will not violate any of the Rules of Professional Conduct in effect during the period of the stay;
- m. Defendant will not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
- n. Defendant paid the costs and fees of this proceeding as assessed by the Secretary within thirty days of the date on the statement of costs and fees.

6. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end three years from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to § .0114(x) of the North Carolina Discipline and Disability Rules, the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the three year suspension in whole or in part if it finds that

any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

7. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

8. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant may apply for reinstatement after serving the activated suspension by filing a petition pursuant to § .0125 of the North Carolina State Bar Discipline and Disability Rules demonstrating compliance with the requirements therein as well as the following requirements by clear, cogent, and convincing evidence:


- a. Defendant properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
- b. Defendant kept the Membership Department of the State Bar informed of his current information for his physical address (not a Post Office box), telephone number, and e-mail address throughout the period of his suspension;
- c. Defendant accepted all certified mail from the State Bar sent to the address on record with the Membership Department of the North Carolina State Bar throughout the period of the suspension;
- d. Defendant responded to all letters of notice and requests for information from the North Carolina State Bar by the deadline stated therein with full and complete responses and all requested documentation throughout the period of his suspension;
- e. Defendant has come into compliance with any outstanding continuing education or membership obligations at the time of the filing of his petition for reinstatement;
- f. Defendant completed four hours of continuing legal education in the area of trust account management approved by the Office of Counsel of the State Bar in the 12 months immediately preceding his petition for reinstatement. These four hours are in addition to the continuing legal education requirements set out in 27 N.C.A.C. ID § .1518. At least one such session shall be the Trust Accounting Rules Continuing Legal Education Program taught by Peter Bolac, Trust Account Compliance Counsel for The North Carolina State Bar;



- g. Defendant provided, with his petition, an accurate three-way reconciliation as described in the State Bar Lawyer's Trust Account Handbook for all trust accounts maintained by him at the time his suspension was activated. Defendant shall use the form prepared by the State Bar's Trust Account Compliance Counsel, which will be provided to him by the Office of Counsel, for this purpose. Defendant shall provide the three-way reconciliation report, client ledgers for all clients with funds in the trust account(s), ledger for any personal funds maintained in the trust account(s) for bank or credit card fees, his trust account ledger, and the bank statements, cancelled checks, and deposit slips corresponding to the reconciliation. The reconciliation will cover the 3 months immediately preceding the activation of the suspension and will accurately reflect the current status of funds and client funds in his trust account(s);
- h. Defendant did not violate any of the Rules of Professional Conduct in effect during the period of the suspension;
- i. Defendant did not violate any laws of the State of North Carolina or of the United States during the period of the suspension; and
- j. Defendant paid all costs and fees of this proceeding as assessed by the Secretary by the date of the filing of his petition for reinstatement.

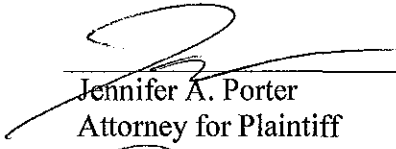
9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules until all conditions of the stay of the suspension are satisfied.

18<sup>th</sup> Signed by the Chair with the consent of the other hearing panel members, this the  
day of August 2014.


  
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Joshua W. Willey, Jr., Chair  
Disciplinary Hearing Panel

Consent Order of Discipline, The North Carolina State Bar v. Robert E. Griffin  
13 DHC 20


Agreed and consented to by:

  
\_\_\_\_\_  
Jennifer A. Porter  
Attorney for Plaintiff

14 Aug 14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert E. Griffin  
Defendant

13 Aug 14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert J. Lane, III  
Attorney for Defendant

August 13, 2014  
\_\_\_\_\_  
Date